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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,537	02/07/2002	Marie Hayet	T7069(C)	7836
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EXAMINER				
POND, ROBERT M				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/067,537

Applicant(s)

HAYET ET AL.

Examiner

Robert M. Pond

Art Unit

3625

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/22/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,7,8,11 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7,8,11 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

Applicants amended claims 1 and 7, and newly added claims 17 and 18. Claims 2, 4, 6, 9, 10 and 12-15 are canceled. All pending claims 1, 3, 5, 7, 8, 11 and 16-18 were examined in this final office action necessitated by amendment. Rejection of claims 2, 12, 14 and 15 under 35 USC 112 2nd was rendered moot due to claim cancellations.

Response to Arguments

Applicant's arguments in light of the amended subject matter, see Remarks, filed 22 May 2008, with respect to the rejection(s) of claims under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Herz as necessitated by amendment.

Regarding comments made by Applicants:

- The Herz system is designed to create and fill orders while maximizing profits.
- (a1): goods are available for purchase- Herz even suggests a shopping list in combination with coupons etc to provide incentives to use the shopping list.

- (a4): Lacking an explicit invoking of 112 6th, the Examiner is giving the broadest reasonable interpretation of this claim element.
- (b1): Lacking an explicit invoking of 112 6th, the Examiner is giving the broadest reasonable interpretation of this claim element.
- (c1): Lacking an explicit invoking of 112 6th, the Examiner is giving the broadest reasonable interpretation of this claim element.
- Regarding Pyo in combination with Herz: Applicants are offering a laundry list of techniques for predictive purchasing. Herz and Pyo substantially teach and suggest the claimed invention. The instant specification merely lists survival analysis among a comprehensive list of other suitable alternatives and does not disclose how survival analysis would work without undue experimentation on the part of one of ordinary skill in the art.
- Regarding claims 17 and 18: design choices. Please see below.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. **Claims 1, 3, 7, 8 and 11 are rejected under 35 USC 103(a) as being unpatentable over Herz (US 2001/0014868).**

Herz teaches a system and methods of selecting offers from an offer database that are likely to result in profitable sales. Methods for doing this require the system to predict which offers the shopper would be likely to accept. The likelihood of acceptance can be calculated, in the simplest case, by counting what fraction of shoppers (or similar shoppers) who were presented with this offer (or similar offers) chose to accept. A key question is how to determine similarity. To this end, the system considers not only the shoppers present goals (as determined in step 3) and the offer profiles, but also the stored profile of this shopper. The shoppers profile includes a summary of offers that the shopper has accepted in the past, as well as demographic and psychographic data that aid in identifying similar shoppers. The system may amplify the shopper's profile with his or her present goals, as mentioned above, and with any offers that the shopper has recently considered or accepted. For example, if the shopper has just bought ski goggles, the system might select offers of other ski-related equipment that is frequently bought along with ski goggles. Once the system has determined a shopper's likelihood of accepting a given offer, it can calculate the expected profit from making that offer (namely, the profit if accepted times the probability of acceptance). See at least abstract; Fig. 1; Herz teaches all the above as noted under the 103(a) rejection and teaches i) predictive shopping, ii) making generating a list offers to a buyer and iii) suggesting a shopping list based on predictive purchase model (see 0262). Given that Herz teaches a suggestive ordering system that produces that presents a list of items to the

buyer likely to be purchased to maximizing profit and using a suggested shopping list to maximize profit, it would have been obvious to try, by one of ordinary skill in the art at time the invention was made, to apply the predictive purchase system and methods of Herz to both suggested offers and suggested shopping lists and incorporate it into the system of Herz since there are a finite number of identified, predictable potential solutions to the recognized need and one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.*

Herz further teaches and suggests :

- Regarding claim 1. (a1) first electronic storage means comprising information concerning goods which are available for ordering, their prices and optionally further information relating to said goods; See at least Fig. 1; 0022; 0024.
- Regarding claim 1. (a2) second electronic storage means comprising information concerning the historic purchasing behavior of one or more clients; See at least abstract; Fig. 1; 0002; 0003; 0022; 0024.
- Regarding claim 1. (a3) third electronic storage means comprising background information of said one or more clients; purchase history; demographics; See at least abstract; Fig. 1; 0002; 0003; 0022; 0024; 0031-0033.

- Regarding claim 1. (a4) fourth electronic storage means comprising environmental information; such correlations can be noted from users' on-line purchase histories and used to generate joint promotions ("buy a new set of skis and get a free lift ticket at a ski resort") known as data mining. See at least 0010; 0037; 0247.
- Regarding claim 1. (b1) electronic interaction means for said one or more clients to add background information to storage means (a3); age of shopper, gender of shopper (implied that this type of information is supplied by the consumer versus guessing likely ethnicity). See at least 0122; 0123; 0124.
- Regarding claim 1. (b2) electronic interaction means for said one or more clients to add order specific information to the system; consumer enters demographic information used to predict offers most likely to be purchased by the consumer. See at least 0031.
- Regarding claim 1. (c1) order prediction means employing a calculation method suitable for predicting orders involving repeat purchase of multiple goods, which, based on the information stored in said storage means (a1-a4), optionally supplemented by the information of "b2," electronically produces a suggestion for a shopping list for said one or more clients, intervals between repeated purchases (e.g. disclosed dog food example)(see at least 0299), wherein said suggested shopping list includes more than five different products.

Note: examination is based on the broadest reasonable interpretation which is the "OR" condition. Offers same of different products; integrating two or more products into an offer (see at least 0003; 0020; 0237; 0247) and/or at least 25% of goods in the suggested shopping list have previously been purchased one or more times in a 12 month period and wherein the suggested shopping list includes a predicted list of goods which have been previously purchased by the client and are likely to be purchased again based on previous shopping behavior and a suggested list of goods that may be attractive for purchase;

Clarification of Herz: a given time interval by all shoppers with certain attributes useful in predicting the best ways to induce purchases (e.g. month(s)). See at least 0011; 0120. total number or pervious purchases; average number of purchases per use of the system; repeat purchases; Fourier analysis applied to the amount of money a shopper pays for certain class of items over time to reveal frequency range; decomposing purchase patters across different frequency ranges. See at least 0116; 0291; 0298; 0300.

- Regarding claim 1. (d1) interaction means for said one or more clients for reviewing the order of "c1" optionally electronically amending and supplementing said order and electronically placing the order;
consumer can augment or alter original offer (e.g. cluster "X" example).

See at least 0258. interacting with system to alter offers. See at least 0276.

- Regarding claim 1. and wherein the suggested shopping list is presented to the client in an ordered manner, sorted by one or more of the parameters selected from the group consisting of an estimated probability that the client will order the items (see at least 0007; 0037; 0073); average frequency with the client orders the items (see at least 0019; 0046; 0115; 0117; 0128; 0141; 0158; cost of the items (see at least 0240; 0246).
- Regarding claim 3. in-store terminals/ kiosks. See at least 0021.
- Regarding claim 7: Rejection is based on disclosures and rationale as noted above.
- Regarding claim 8: Rejection is based on at least the disclosures as noted above.
- Regarding claim 11: system mediates retailer/seller-consumer interactions. Rejection is based on disclosures as noted above.

2. Claims 5 and 16 are rejected under 35 USC 103(a) as being unpatentable over Herz (US 2001/0014868) in view of Pyo (Paper #20041001, US 6,636,836).

Herz teaches all the above as noted under the 103(a) rejection and teaches i) using a predictive application to make suggestions to a consumer ii) time-series

analysis (see at least 0299-0301), averaging (as noted above), but does not disclose other predictive methods. Pyo teaches a system of software components providing a variety of analyzing methods to achieve better predictive results (see at least abstract; col. 1, line 8 through col. 2, line 67). Pyo further teaches at least rule-based, regression, collaborative filtering, content filtering, neuron network theory, and statistical theory methods (see at least col. 8, lines 32-44). One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of Pyo would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of Pyo to the teachings of Herz would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

Herz and Pyo teach and suggest all the above as noted under the 103(a) rejection and substantially teach and suggest the claimed inventions. It would have been obvious to one of ordinary skill in the art at time the invention was made to ascertain other suitable analysis techniques of predicting offers such as survival analysis or others. Note: the instant specification merely lists survival analysis among a comprehensive list of other suitable alternatives.

3. Claims 17 and 18 are rejected under 35 USC 103(a) as being unpatentable over Herz (US 2001/0014868).

Herz teaches and suggest all the above as noted under the 103(a) rejection and further teaches: i) a given time interval by all shoppers with certain attributes useful in predicting the best ways to induce purchases (e.g. month(s)), ii) total number or pervious purchases; average number of purchases per use of the system; repeat purchases, iii) Fourier analysis applied to the amount of money a shopper pays for certain class of items over time to reveal frequency range; iv) decomposing purchase patters across different frequency ranges and further teaches suggesting a shopping list or an order for multiple items, accepting one or more offers and system parameters and thresholds for predictive purchase modeling (see at least 0020; 0073). It would have been obvious to one of ordinary skill in the art at time the invention was made, to ascertain that setting parameters/thresholds (e.g. 25% or 50%) and the number of offers (five, 10 or more) to a buyer are system parameters requiring design choices as permitted by the system and methods of Herz.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert M. Pond/
Primary Examiner, Art Unit 3625
September 1, 2008